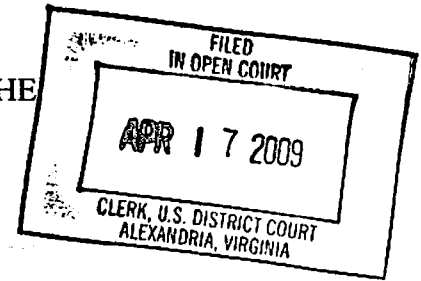


UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division



UNITED STATES OF AMERICA

v.

OSCAR OMAR LOBO-LOPEZ,

Defendant.

)

)

)

) Criminal No. 1:08cr194

)

) Judge T. S. Ellis, III

) Trial Date: April 14, 2009

**GOVERNMENT'S MEMORANDUM REGARDING EXPERT WITNESS**

The United States opposes the defendant's request to call an El Salvadoran defense attorney to provide expert testimony supporting the contention that MS-13 is not an enterprise. The defendant relies on the language in the indictment that MS-13 has operated in the Eastern District of Virginia since 1993. The indictment also states that MS-13 had members and associates spread throughout the United States in, among other places, Virginia, Maryland, Washington, D.C., North Carolina, Texas, and California, as well as in Central America, including El Salvador. The defense incorrectly contends that we have alleged that MS-13 "operates" in El Salvador. The indictment states nothing more than members and associates are spread throughout the United States and Central America to include El Salvador.

Even if the indictment is interpreted as alleging that MS-13 operates in the United States and Central America, to include El Salvador, the United States is not required to prove that the enterprise operated in El Salvador. The United States is only required to prove that the MS-13 is a RICO enterprise engaged in racketeering activity. *United States v. Fiel*, 35 F.3d 997, 1003 (4<sup>th</sup> Cir. 1994). The cases make clear that the government need not prove all facts charged in an

indictment; instead, only enough facts to prove the essential elements of the crime must be demonstrated at trial. *United States v. Jenkins*, 785 F.2d 1387, 1392 (citing *United States v. Hughes*, 766 F.2d 875, 879 (5<sup>th</sup> Cir. 1985)). The United States need not prove that MS-13 operated in El Salvador, or had members in El Salvador.<sup>1</sup> This is mere surplusage not critical to the charged crime.

If the portion of the indictment is critical to the charged crime, the United States contends that it is nonetheless proper federal pleading permits the United States to charge in the conjunctive. In *United States v. Mejia*, 545 F.3d 179, 207, the Second Circuit concluded that the indictment was sound even though the United States had not proven the narcotics trafficking charged in the indictment. “A conviction under such an indictment will be sustained if the evidence indicates that the statute was violated in any of the ways charged.” *Id.* (citing *United States v. McDonough*, 56 F.3d 381, 390 (2d Cir. 1995)). In *Mejia*, the United States chose to charge narcotics trafficking in addition to violent crimes. Similarly in this case, we chose to state in the conjunctive several areas where members of the enterprise were located.

Because the existence of MS-13 members in El Salvador is not critical to the indictment, the expert’s testimony regarding MS-13 is irrelevant. The expert testimony moreover is cumulative to a gang expert already noticed by the defense.

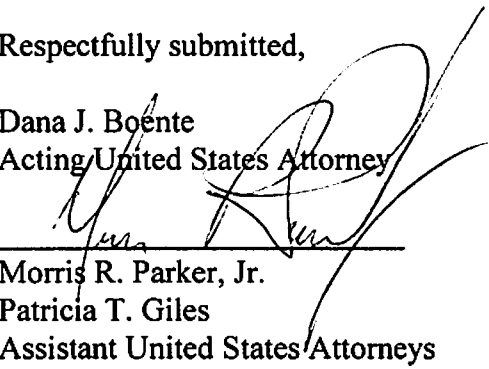
---

<sup>1</sup>The United States contends that it has proven that members from the Virginia area were present in El Salvador (Travieso), North Carolina (Buso), and Texas (Dado) after joining the gang and in relation to either fleeing law enforcement or returning to the country.

Respectfully submitted,

Dana J. Boente  
Acting United States Attorney

By:

  
\_\_\_\_\_  
Morris R. Parker, Jr.  
Patricia T. Giles  
Assistant United States Attorneys

Zachary C. Richter  
Special Assistant United States Attorney

Office of United States Attorney  
Justin W. Williams U.S. Attorney's Building  
2100 Jamieson Ave  
Alexandria, VA 22314

CERTIFICATE OF SERVICE

I certify that on the 17<sup>th</sup> day of April 2009, I hand-delivered a copy of the foregoing

Government's Memorandum to the following:

Lana M. Manitta, Esq.  
Counsel for Defendant Oscar Lobo Lopez  
201 N. Union Street, Suite 140  
Alexandria, VA 22314  
(703) 299-3441  
Fax: (703) 299-3441  
E-mail: [LManitta@RRMDK.com](mailto:LManitta@RRMDK.com)

John C. Kiyonaga, Esquire  
Counsel for Defendant Oscar Lobo Lopez  
526 King Street, Suite 213  
Alexandria, VA 22314  
(703) 739-0009  
Fax: (703) 836-0445  
E-mail: [jkiyonaga@earthlink.net](mailto:jkiyonaga@earthlink.net)

By: 

Morris R. Parker, Jr.  
Assistant United States Attorney  
Office of United States Attorney  
Justin W. Williams U.S. Attorney's Building  
2100 Jamieson Ave  
Alexandria, VA 22314  
Phone: 703-299-3700  
Fax: 703-299-3982  
E-mail address: [morris.parker@usdoj.gov](mailto:morris.parker@usdoj.gov)